

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**Present:**

**Mr. Justice Md. Badruzzaman.**

**And**

**Mr. Justice Sashanka Shekhar Sarkar**

**CIVIL REVISION NO. 02 OF 2024.**

**Shamsun Nahar and others.**

...Petitioners.

-Versus-

**Most. Hosne Ara Begum and others.**

...Opposite parties.

Mr. Md. Obidul Haq, Advocate with

Mr. Md. Mizanur Rahman, Advocate.

...For the petitioners.

Mr. Mizan-Ur-Rashid, Advocate

... For opposite party No. 1

**Heard on: 09.06.2024 and**  
**judgment on: 01.07.2024.**

**Md. Badruzzaman, J**

This Rule was issued calling upon the opposite parties to show cause as to why order dated 05.09.2023 passed by learned Joint District Judge, 1<sup>st</sup> Court, Chattogram in Other Class Suit No. 75 of 1998 debarring the petitioners from contesting the suit for non-compliance of the order of the Court dated 07.03.2022, now pending before the said Court should not be set aside.

At the time of issuance of Rule, this Court vide order dated 03.01.2024 stayed operation of the impugned order for a period of 4 (four) weeks which was, subsequently, extended time to time.

Facts, relevant for the purpose of disposal of this Rule, are that opposite party No. 1 as plaintiff instituted Other Suit No. 75 of 1998 before the learned Sub-ordinate Judge, 1<sup>st</sup> Court, Chattogram against the predecessor of the present petitioners, Md. Abul Hashem and others for a decree of declaration of title to and recovery of Khas possession of the suit property and another declaration that B.S Khatian No. 29 was wrongly prepared in the name of defendants No. 5 and 6. Defendant Nos. 5 filed written statements on 4.5.2017 through his constituted attorney Md. Abdur Rahim. After death of defendant No. 5, his heirs (the petitioners) were substituted as defendants No. 5(Ka)-5(Chha) and they appointed said Md. Abdur Rahim as their constituted attorney and entered appearance in the suit through their constituted attorney. When the suit was at the stage of further peremptory hearing (F.P.H), the plaintiff filed an application for drawing up of proceeding under section 476 of the Code of Criminal Procedure against defendants No. 5(Ka)-5(Chha), the petitioners alleging that they created the power of attorney and other documents by forgery. The trial Court, after hearing the parties, vide order dated 07.03.2022 directed defendant Nos. 5(Ka)-5(Cha), the petitioners No. 1-6, to appear in- person along with the attorney on 28.03.2022 for examining the genuineness of the signature of the principals and attorney, in default proceeding under section 476 of the Code of Criminal Procedure would be initiated against defendants No. 5(Ka)-5(Cha) and their attorney. The petitioners did not challenge order dated 07.03.2022 before any higher forum and did not comply with the order of the Court dated 07.03.2022, also. Thereafter, the plaintiff filed an application for drawing up of proceeding under section 476 of the Code of Criminal

Procedure against the attorney and defendants No. 5(Ka)-5(Chha). The trial Court, after hearing the parties, vide impugned order dated 05.09.2023 instead of drawing up of proceeding under section 476 of the Code of Criminal Procedure debarred defendants No. 5(Ka)-5(Cha), petitioners No. 1-6 from contesting the suit and fixing the next date on 20.9.2023 for further peremptory hearing (F.P.H). Defendants No. 5(Ka)-5(Chha), the petitioners have come up with this application under section 115(1) of the Code of Civil Procedure challenging the order dated 5.9.2023 and obtained the instant Rule.

Plaintiff-opposite party No. 1 has entered appearance to contest the Rule.

Mr. Md. Obidul Haq, learned Advocate appearing with Mr. Md. Mizanur Rahman, learned Advocate for the petitioners submits that due to wrong advice of the concerned learned Advocate of the trial Court the petitioners could not appear before the trial Court in compliance of order dated 07.03.2023 and upon wrong advice, they filed transfer miscellaneous case before the learned District Judge but now they understand that if they are allowed to comply with the order of the trial Court dated 07.03.2022, they shall appear before the trial Court in compliance of order dated 07.03.2022 and accordingly, to secure ends of justice, the petitioners should be given an opportunity to comply with the order of the trial Court dated 07.03.2022 after setting aside order dated 05.09.2023 so far it relates to the impugned order debarring petitioners No. 1-6 from contesting the suit.

Mr. Mizan-Ur-Rashid, learned Advocate appearing for opposite party No. 1 though opposes the Rule but frankly concedes that the suit was initiated in 1998 and the plaintiff would have no objection, if

the impugned order is set aside by giving an opportunity to defendants No. 5(Ka)-5(Cha) to comply with the order of the trial Court dated 07.03.2022 with a direction upon the trial Court to dispose of the suit within a shortest possible time.

We have heard the learned Advocates, perused the revisional application, order dated 07.03.2022 and the impugned order dated 05.09.2023. It appears that vide order dated 07.03.2022 the trial Court directed defendants No. 5(Ka)-5(Cha) and their constituted attorney to appear in-person before the trial Court on 28.03.2022 but they did not comply with the said order and thereafter, the trial Court passed the impugned order dated 09.05.2023 debarring them from contesting the suit.

We find no illegality in the impugned order passed by the trial Court. However, since the petitioners are ready to comply with the order of the trial Court dated 07.03.2022 and praying for allowing them to comply with said order and the plaintiff is not opposing said prayer, we are of the view that justice would be met if the petitioners are allowed to comply with order dated 07.03.2022 passed by the trial Court.

Accordingly, this Rule is made absolute, however, without any order as to costs.

The impugned order dated 5.9.2023 so far it relates to debarring defendants No. 5(Ka)-5(Cha), from contesting the suit is set aside.

Defendants No. 5(Ka)-5(Cha) (petitioners No. 1-6) and their constituted attorney, Abdur Rahim are directed to comply with order dated 07.03.2022 passed by the trial Court and the trial Court is directed to fix a date for compliance of said order dated 07.03.2022

and thereafter, proceed with the suit and conclude the trial of the suit preferably within 3 (three) months from the date of receipt of the copy of this judgment.

Communicate a copy of this judgment to the Court below at once.

**(Justice Md. Badruzzaman)**

**I agree.**

**(Mr. Justice Sashanka Shekhar Sarkar)**